

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Z-Tel Communications, Inc.'s
Responses to QUESTION TO Z-TEL COMMUNICATIONS, INC.
DTE Docket No. 03-60 (Track A)**

January 27, 2004

1: Please refer to Z-Tel's response to the Department's Information Request No. 14 issued October 9, 2003 to all Massachusetts CLECs. In the response, Z-Tel states that the term "qualifying service" as used in this Information Request is far broader than the "mass market services" inquiry at issue in this proceeding. Please explain.

Response: In Department's First Information Request, No. 14, to Z-Tel, it requested for purposes of the 9-month "mass market switching" inquiry that Z-Tel provide information regarding all Massachusetts "qualifying services" that it provides over any switch that Z-Tel owns or operates. In the *Triennial Review Order* and implementing rules, the FCC is clear that "qualifying services" encompass a number of telecommunications services that are far broader than the "mass market services" that are the proper scope of inquiry for this 9-month switching proceeding.

FCC Rule 51.5, 47 C.F.R. § 51.5, defines a "qualifying service" as follows:

A qualifying service is a telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone service, and access services, such as digital subscriber line services and high-capacity circuits.

The FCC's concept of "qualifying services" has no relevance to any particular impairment inquiry. The FCC defined "qualifying services" in order to place parameters upon the *uses* to which a requesting carrier may utilize a UNE if access to that UNE is required by other FCC rules. In particular, for a carrier to obtain access to UNEs, a requesting carrier "must provide qualifying services using the UNE to which they seek access." FCC *Triennial Review Order*, ¶ 135. However, requesting carriers are not limited to providing *only* "qualifying services" over a UNE – that is, if a requesting carrier provides a "qualifying service" over a UNE, it can also use the UNE to provide non-qualifying services. *Id.* ¶¶ 143-46. Most importantly, the FCC's concept of "qualifying

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services” is broad and encompasses a number of services, including Commercial Mobile Radio Services, xDSL, and high-capacity circuits, “whether they are sold to residential or business customers.” *Id.* ¶ 140.

In contrast, the FCC defines “mass market services” quite differently and more narrowly, and that definition is made precisely for the purposes of the granular “impairment” analysis. In paragraph 124 of the FCC *Triennial Review Order*, the FCC discusses the three “Customer Class Distinctions” it makes its impairment analysis of all UNES – “mass market, small and medium enterprise, and large enterprise. . .” The FCC noted that “for certain network elements the determination whether impairment exists may differ depending upon the customer class a competing carrier seeks to serve.” *Id.*

With regard to unbundled local switching in particular, the FCC utilized these customer class distinctions to distinguish between switching for “DS1 enterprise customers” and “mass market customers.” The FCC relied upon Z-Tel’s Comments in defining the “mass market” as follows:

The record demonstrates that customers for mass market services are different from customers in the enterprise market. The mass market for local services consists primarily of consumers of analog “plain old telephone service” or “POTS” that purchase only a limited number of POTS lines and can only economically be served via analog DS0 loops.

Id. ¶ 459.

As the Department knows, the FCC came out with different impairment frameworks for “mass market customers” and “DS1 enterprise customers.” While unbundled switching to serve DS1 enterprise customers was presumptively de-listed, pending a 90-day process before state commissions, the FCC decided to retain unbundled switching to serve “mass market customers”, subject to a 9-month review process before state commissions. Indeed, one of the tasks of the Department in this proceeding is to draw the line

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between “enterprise customers” and “mass market customers” in Massachusetts, by means of a line-count. *Id.* ¶ 497.

It might be said that *all* of the “customer class distinctions” drawn by the FCC in paragraphs 123-129 of the *Triennial Review Order* distinguish between different types of “qualifying services.” High-capacity services to large business enterprises are certainly “qualifying services”; however, they are not “mass market services.” In other words, the set of all “qualifying services” includes all “mass market” voice services but also includes a host of other telecommunications services (such as enterprise services and access services) that are most definitely not in the set of “mass market” services.

This distinction is of crucial importance as the Department collects and reviews data in the 9-month mass-market switching proceeding. If the Department believes that it can provide a complete analysis of whether the self-provisioning or wholesale triggers are satisfied merely by asking whether CLECs provide “qualifying services” on their own switches, it is mistaken.

Indeed, for the trigger analysis, the FCC clearly instructed state commissions to review the specific “product market” to which CLECs use their own switches to serve. The services that a CLEC provides that “enterprise market” on its own switch may in fact be “qualifying services” but those services are irrelevant to the 9-month “mass market switching” trigger analysis.

Indeed, since the FCC stated that all self-provisioning triggers “should be actively providing voice service to mass market customers in the market,” *id.* ¶ 499, whether a CLEC utilizes its own switch to serve DS1 or above high-capacity lines to large businesses provides no insight as to whether the self-provisioning or wholesale trigger test has been met. Indeed, paragraph 508 of the FCC Order plainly states that “switches serving the enterprise market do not qualify for the [self-provisioning and wholesale] triggers . . .” *Id.* ¶ 508. Since switch-based services to large business enterprises are providing “qualifying services”, the Department’s Request No. 14 required CLECs to produce that information, even though that information will not assist the

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Department in the 9-month “mass market switching” trigger analysis.

The Department needs to analyze actual switch deployment and service information carefully. For instance, to serve the enterprise market, a CLEC might provide even the largest businesses some analog dialtone lines or voice-grade equivalents – such as fax lines, analog dial-up lines for conference rooms and guest offices, or lines utilized for dial-up remote LAN access. Providing those analog dialtone lines or voice-grade equivalents does not make this CLEC a “mass market” provider, because those lines are still being sold to an “enterprise customer”. A complete answer requires analysis of the classes of customer to which those analog or voice-grade lines are being provided.

Moreover, the FCC noted that “the self-provisioning trigger discussed above identifies only the existence of *actual* competitive facilities serving the mass market and does not address the *potential* ability of competitive LECs to deploy their own switches to serve this market.” *Id.* ¶ 506. As a result, the question as to whether a CLEC that today uses its switch only to provide “enterprise” services could change business plans to serve the “mass market” is a question for the “potential deployment” analysis, which is not at issue in this proceeding. *Id.* ¶¶ 508-510.

In summary, by itself, the Department’s Data Request No. 14, by requesting information solely as to whether Z-Tel utilizes a switch to provide any “qualifying service” will not provide the Department enough information to make the “mass market switching” trigger analysis. A more-detailed examination as to the actual classes of customers (specifically “mass market customers”) being served by switch-based CLECs is necessary.

Answer provided by Tom Koutsky.